

**STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC
SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EV20AB-67178**

GEORGE M. FETZ,

Complainant,

v.

**GARDEN EMPIRE
VOLLEYBALL
ASSOCIATION,**

Respondent.

**Administrative Action
FINDING OF PROBABLE CAUSE**

On October 11, 2018,¹ George M. Fetz (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR), alleging that Garden Empire Volleyball Association (GEVA or Respondent), subjected him to differential treatment and discharged him because of his age (79 years old) in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent is a "Regional Volleyball Association" that is a member organization of USA Volleyball, with the stated mission of being "responsible for the promotion and growth of volleyball in New Jersey, Long Island, and the Greater Metropolitan Area of New York City." Respondent maintains an office in Westfield, New Jersey. Respondent says that it promotes the sport of volleyball by offering competition, training, and education in a multitude of disciplines. It authorizes and conducts indoor, outdoor, beach and grass volleyball tournaments, as well as authorizing clubs who in turn offer training programs and competitive opportunities. A Regional Commissioner is the primary representative of GEVA. At all times relevant to this complaint, Robert Baker served as GEVA's Regional Commissioner.

Complainant worked as a Referee Assignor in Respondent's organization for 12 years. The Assignor is responsible for assuring that certified referees are assigned to GEVA authorized tournaments. From 2005 to November 2017, Complainant was an employee of Respondent. On

¹ DCR's records indicate that Complainant visited the federal Equal Employment Opportunity Commission (EEOC) in March 2018, and the EEOC referred Complainant to DCR when it determined that Respondent may not have a sufficient number of employees for federal jurisdiction under the Age Discrimination in Employment Act.

November 14, 2017, Complainant's job status was changed from an employee to an independent contractor. Complainant was terminated from the Assignor position by Respondent on December 12, 2017.

In the verified complaint, Complainant alleged that he attempted to negotiate the terms of a contract offered to him to retain his Assignor position, including his specific responsibilities, but Respondent refused to engage in negotiations. Complainant alleged that [REDACTED], approximately 50 years of age, was appointed as Assignor to replace him. Complainant believed his age factored into Respondent's decision to replace him, since he said Commissioner Robert Baker said at an Executive Council meeting during the 2013-14 volleyball season that "a bunch of old men were running this corporation," and that it needed to "get younger people involved."

In its response to the complaint, Respondent denied age played any part in its decision, and asserted that Complainant was discharged because he would not sign the independent contractor agreement with which he had been presented in a timely fashion. Respondent also stated that it was willing to keep Complainant in the Assignor position but he insisted on a two-year contract.

In an interview with DCR, Complainant said that he had problems with a number of items in the contract presented to him. Specifically, Complainant stated that it spelled out duties inconsistent with those of an Assignor, as he understood and practiced for the previous 12 years while an employee. Complainant also said he was ready to compromise on the issue of a two-year contract, but was given a deadline in which to sign and that ended the matter. Complainant stated that most significantly, his replacement, [REDACTED], who is almost three decades younger, did not have to sign a contract for the 2017-2018 volleyball season, a condition Respondent had insisted on with Complainant.

DCR interviewed [REDACTED], the person who replaced Complainant. He stated that he worked the 2017-2018 season without a contract, but had been given one for the 2018-2019 season. DCR also reviewed three emails from [REDACTED] to Complainant in which [REDACTED] states that he was never was given a contract for the 2017-2018 Season.

DCR interviewed [REDACTED], Respondent's Webmaster, who Respondent considers to be an independent contractor. [REDACTED] was asked if he had to sign a contract for the 2017-2018 volleyball season and replied that he did not.

DCR interviewed Robert Baker, Respondent's Commissioner. Baker defended Respondent's position and stated that Complainant was difficult to deal with during their negotiations. Baker said that in August 2017 Complainant lost his position as the Adult Director, a job unrelated to his role as Assignor, as the result of an election. This left Complainant with no position in the organization, but he was offered a contract on December 9, 2017 to continue as the Assignor. Baker said Complainant wanted some changes made to the contract and refused to sign until they were agreed upon. Baker stated that because Complainant refused to sign, he gave him a deadline of December 12, 2017 to complete the contract. When the deadline passed without Complainant agreeing to the contract, Baker said he had no choice but to fire Complainant and get a new Assignor in his place.

DCR asked Baker why Complainant was asked to sign the Assignor contract so quickly, whereas [REDACTED] was permitted to work without a signed contract for a year. Baker said that was a mistake, but the organization corrected the problem by the following year 2018-2019 volleyball season. DCR also asked Baker whether he made the comments during the Executive Committee meeting during the 2013-14 season as alleged by Complainant. Through counsel, Baker denied Complainant's specific allegations, but admitted saying that "we need new blood."

DCR interviewed [REDACTED], formerly of the GEVA Board, who described the position of Assignor as running and sanctioning approximately 200 tournaments a year. [REDACTED] stated that Complainant had to assign all the officials for the various matches and tournaments. He stated there might be three officials or up to nine or ten for a match, and it was necessary for the Assignor to coordinate with the Junior and Adult Directors. Complainant had to develop the number of courts, teams, dates and locations of the tournaments. Complainant also had to juggle who the officials would be and rate the officials, and he had to work on multiple tournaments at the same time. [REDACTED] stated that, although he had left the Board a few years earlier, he had worked with Complainant and "George Fetz was good at his job." [REDACTED] stated that he believed it to have been an unjust termination.

Information obtained during the investigation was shared with Respondent, and prior to the conclusion of the investigation, Respondent was given an opportunity to submit additional information.

ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." *Ibid*.

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the "terms, conditions or privileges of employment" based on age. N.J.S.A. 10:5-12(a).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant based on his age. Complainant, who was 79 years

old, had worked for 12 years as the Assignor, without any indication of any negative issues with his job performance.² Respondent nonetheless discharged Complainant from his position as Assignor after giving him three days to sign a contract without attempting to negotiate its terms with Complainant. Respondent then hired a significantly younger man to replace Complainant without requiring this individual, as well as another individual employed as Webmaster by Respondent, to sign a contract. Respondent referred to this as a “mistake” that was rectified the following year. However, Complainant’s refusal to sign the contract in three days was the purported reason for his termination. If that were true, it seems highly unlikely that Respondent would so soon thereafter forget the contract for two other employees.

In addition, while Robert Baker denied using the exact discriminatory language Complainant alleged, he did admit saying that “we (Respondent) need new blood” during a meeting Complainant attended. And [REDACTED], formerly of the GEVA Board, stated that Complainant “was good at his job” and that his termination was unjust.³

At this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant’s allegations of age discrimination.



Date: August 1, 2019

Rachel Wainer Apter, Director
NJ Division on Civil Rights

² While the LAD prohibits employment discrimination based on age, it also provides that “nothing herein shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age.” N.J.S.A. 10:5-12(a). In Nini v. Mercer County Cmty. College, 202 N.J. 98, 112-15 (2009), the New Jersey Supreme Court found that this provision did not apply to individuals over the age of 70 who, like Complainant here, had a preexisting and continuing work relationship with the employer.

³ To the extent Complainant’s loss of his Assignor position is deemed to stem from a refusal to contract as opposed to termination of employment, such a refusal to contract based on age would nonetheless violate the LAD. See N.J.S.A. 10:5-12(l).